

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

WEST VIRGINIA STATE  
UNIVERSITY BOARD OF GOVERNORS  
for and on behalf of West Virginia State  
University,

Plaintiff,

v.

Case No.: 2:17-cv-03558  
Hon. John T. Copenhaver, Jr.

THE DOW CHEMICAL COMPANY;  
UNION CARBIDE CORPORATION;  
BAYER CORPORATION;  
BAYER CROPSCIENCE LP;  
BAYER CROPSCIENCE HOLDING INC;  
RHONE-POULENC INC.;  
RHONE-POULENC AG COMPANY;  
RHONE-POULENC AG COMPANY, INC.; and  
AVENTIS CROPSCIENCE USA LP,

Defendants.

**Report of Parties' Planning Meeting**

Plaintiff West Virginia State University (the "University") respectfully submits this report of the parties' planning meeting, pursuant to Federal Rule of Civil Procedure 26(f). The University sought to submit a joint report with Defendants that would explain the areas in which the parties agreed and disagreed, but Defendants declined to do so. The University believes that submitting entirely separate Rule 26(f) reports is poor practice, at best, and imposes an unnecessary burden upon the Court, but it has no ability to force Defendants to submit a joint report. The University therefore submits this report alone.

1. *Meeting of parties.* Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held by telephone on October 4, 2017. Those participating were:

- a. Steven Ruby and Samuel Hrko for the University;
- b. Patricia Bello and Floyd E. Boone, Jr. for defendant Union Carbide Corporation;
- c. David R. Pogue, Christine P. Payne, and Scott A. McMillin for defendant, The Dow Chemical Company;
- d. Joseph M. Price, Robert E. Lannan, and Stephen F. Gandee for defendants Bayer Corporation, Bayer CropScience LP, Bayer CropScience Holding, Inc., Rhone-Poulenc Inc., Rhone-Poulenc AG Company, Rhone-Poulenc AG Company Inc. and Aventis Cropscience USA LP.

2. *Pre-discovery disclosures.* The parties will exchange by November 6, 2017, the information required by Federal Rule of Civil Procedure 26(a)(1).

3. *Joinder and amendment.* The parties should be allowed until December 15, 2017, to join additional parties. Amendments to the pleadings should be governed by Federal Rule of Civil Procedure 15.

4. *Subjects of discovery.* Discovery will be needed on at least the following subjects:

- a. Contamination of groundwater originating at the chemical plant in Institute, West Virginia, that various defendants have owned and operated.
- b. Times at which such contamination has occurred.
- c. The specific sources within the plant of such contamination.
- d. The processes by which such contamination occurred.
- e. Defendants' knowledge of such contamination.
- f. Defendants' response to such contamination.
- g. Defendants' efforts or lack of effort to prevent such contamination.

- h. Defendants' policies and practices relating to the occurrence of the contamination.
  - i. Communications regarding the contamination by Defendants and others.
  - j. The business relationships among Defendants, and among Defendants and other entities or persons involved in the contamination. This includes, but is not limited to, indemnity relationships among Defendants and other persons or entities.
  - k. Defendants' liability under any of the University's asserted causes of action.
  - l. Financial aspects of the operation of the Institute plant.
  - m. Defendants' finances.
5. *Electronically stored information; protective order; Rule 502 order; deposition protocol.*
- The University proposes that the parties meet and confer regarding these issues and submit appropriate protocols and orders for approval by November 13, 2017.
6. *Complex case designation.* The University believes that this action is not suitable for a complex case designation.
7. *Scheduling order.* The University proposes the following:
- a. Mediation should take place on or before November 19, 2018.
  - b. Potential dispositive motions should be filed by November 8, 2018, with responses and replies filed according to the local rules.
  - c. The University requests a pretrial conference on or around February 18, 2019.
  - d. The University should submit a proposal pretrial order to the defendants on or before February 11, 2019, and Defendants should compile a proposed integrated pretrial order and submit it to chambers on or before February 21, 2019.

- e. Where applicable, proposed jury instructions should be exchanged and transmitted to chambers in Microsoft Word format on or before February 25, 2019.
  - f. A final settlement conference should take place on March 1, 2019.
  - g. The case should be ready for trial by March 4, 2019; at this time, trial is expected to take approximately 14 days.
8. *Discovery schedule.* The University proposes the following:
- a. Last day to serve discovery requests: April 30, 2018.
  - b. Last date to take a non-expert deposition: June 15, 2018.
  - c. Expert reports due from party bearing burden of proof on an issue: July 16, 2018.
  - d. Expert reports due from party not bearing burden of proof on an issue: August 15, 2018.
  - e. Rebuttal expert reports due: September 3, 2018.
  - f. Last date to take an expert deposition: October 5, 2018.
9. *Discovery limits.* The University submits that this case may require discovery beyond the default limits of the Federal Rules of Civil Procedure but that this cannot be determined with certainty until at least some document discovery is received. The University therefore proposes to address this issue in a filing to be made with the Court at a later date.
10. *United States Magistrate Judges.* United States Magistrate Judges will resolve discovery disputes. The University does not consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, or order the entry of a final judgment.

Dated: October 11, 2017

Respectfully submitted,

/s/ Steven R. Ruby

Brian A. Glasser (WVSB #6597)

Samuel A. Hrko (WVSB #7727)

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*Board of Governors, for and on behalf of*

*West Virginia State University*

**Certificate of Service**

The undersigned counsel for the University hereby certifies that on this 11th day of October, 2017, a true and correct copy of the foregoing **Report of Parties Planning Meeting** was electronically filed with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to all attorneys of record in this matter and via United States Mail to the following non CM/ECF participants:

Douglas J. Kurtenbach  
Douglas G. Smith  
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/s/ Steven R. Ruby

Steven R. Ruby